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November 13, 2009

The Honorable Sterling Johnson  
Senior U.S. District Court Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

By Fax and Hand Delivery

Re: U.S.A. v. Thomas Archer and Rukhsana Rafique, 08-CR-288 (s-1) (SJ)


Your Honor:

This is a joint request by the government and the defense for a brief adjournment of the trial, because of the Department of Homeland Security's delay in providing copies of the A-files to the defense. As the Court likely knows from defense counsel's earlier letter, the Department of Homeland Security, after copying the files, today refused to deliver the files to the Assistant U.S. Attorney's office or the defense. The Assistant U.S. Attorney's office agreed to pick up and deliver the files, but the delivery was not complete until 3:00 p.m. This discovery fills four archive boxes.

With the Court's consent, both the government and the defense agree that an appropriate remedy for this delay would be to have jury selection on Monday, November 16, but adjourn openings and testimony to Wednesday, November 18. The government believes that their case will now take three days at the outside to present, and the defense believes that the defense case will take a day at the outside to present.

If the defense were granted the additional time to prepare, we would withdraw our request for a limiting and charging instruction with respect to the A-files. If the Court is not inclined to grant the request for an adjournment, the defense continues in its request for a sanction in the form of a limiting and charging instruction for the Department of Homeland Security's delay. The government has informed defense counsel that it will object to this sanction.

Respectfully submitted,

  
Mildred M. Whalen

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cc: Assistant U.S. Attorney Andrew Goldsmith  
Assistant U.S. Attorney Soumya Dayanda  
Ms. Karina Alomar, Esq.  
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ECF